RECENT IMPORTANT DECISIONS.

ADVERSE POSSESSION — RAILROADS — EFFECT OF CHANGE OF LINE. — Where a railroad company, which by the construction of its road acquired a right of way over public lands, has re-located its line over another right of way, *held* that the old right of way can be acquired by adverse possession. *Mills* v. *Denver and R. G. R. Co.* (D. C. Colo. 1912) 198 Fed. 137.

The Railroad Company, to sustain the rule that a railroad company's right of way is held for a public use, and cannot be acquired by adverse possession, cited and relied upon *Northern Pacific R. R. Co.* v. *Ely,* 197 U. S. 1, 49 L. Ed. 639, and *Northern Pacific R. R. Co.* v. *Townsend,* 190 U. S. 267, 47 L. Ed. 1044, in which cases the rights of way had been granted by Congress. But the court pointed out that the reason for the rule in those cases did not exist in the principal case, because the original route given by Congress for the line of the road had been abandoned, and no part of it was being used for the intended purpose. On the question whether lands acquired for the use of a railroad are subject to the rules governing private property and can be acquired by adverse possession, the United States Supreme Court rule announced in the above cases is followed in only a few states—*McLucas* v. *St. Joseph & G. I. Ry. Co.,* 67 Neb. 603; *Mobile & Ohio Ry. Co.* v. *Donovan,* 104 Tenn. 465; *Union Pacific Ry. Co.* v. *Kindred,* 43 Kan. 134—while the great majority of the states seem to follow the contrary rule: *Illinois Central Ry. Co.* v. *Houghton,* 126 Ill. 233, 9 Am. St. Rep. 581, 18 N. E. 301; *Pittsburg etc. Ry. Co.* v. *Stickley,* 155 Ind. 312, 58 N. E. 192; *Pollock* v. *Maysville etc. Ry. Co.,* 103 Ky. 84, 44 S. W. 359; *Matthews* v. *Lake Shore Ry. Co.,* 110 Mich. 170, 64 Am. St. Rep. 336, 67 N. W. 1111; *Northern Pacific Ry. Co.* v. *Townsend,* 84 Minn. 152, 87 Am. St. Rep. 342, 86 N. W. 1007; *Wilmot* v. *Yazoo etc. Ry. Co.,* 76 Miss. 374, 24 South. 701; *Spottiswoode* v. *Morris etc. Ry. Co.,* 61 N. J. L. 322, 40 Atl. 505; *Texas etc. Ry. Co.* v. *Maynard* (Tex. Civ. App.), 51 S. W. 255; *Northern Pac. Ry. Co.* v. *Ely,* 25 Wash. 384, 65 Pac. 555; *Bobbett* v. *Southeastern Ry. Co.,* L. R. 9, Q B. Div. 424.

BANKRUPTCY—EXTENSION OF TIME FOR FILING PETITION FOR DISCHARGE.— A bankrupt, more than a year after adjudication, filed a petition asking for an extension of time in which to file an application for discharge under § 14a of the Bankruptcy Act, and the court, without notice to creditors, granted the petition, and the application was filed. Creditors moved to vacate the order on the ground that no notice had been given, that the petition was not verified, and that the grounds stated in the petition were insufficient. The petition for leave to file stated that the petitioner "believed that his attorneys had filed his petition for discharge within the statutory period of 12 months, and in compliance with the law relating thereto; that his said attorneys understood and honestly believed that they were not to file such petition until further specific instructions from the bankrupt; and, that owing to such misunderstanding, with no intention to mislead or delay, and

without bad faith on the part of any one connected with the case, failure to file said petition occurred." *Held,* that the order granting leave to file was properly entered, and motion to vacate was denied. *In re Churchill,* (D. C. Wis. 1912) 197 Fed. 111.

The court cites no authority for its conclusion, but *In re Casey,* 195 Fed. 322, 28 A. B. R. 359, is in accord. Casey was adjudged a bankrupt and failed to file a petition or an application for discharge until 14 months from the date of adjudication. A summary of the reasons for not filing within the statutory period which the bankrupt offered in support of his petition was that since his bankruptcy he had become a common laborer; that he was endeavoring to support his family, consisting of a wife and three children, from the fruits of his toil; and that sickness in his family had so exhausted his funds that he was unable earlier to bear the expense of such proceeding. The court granted the desired extension, and from this order no appeal was taken, but at the hearing on the petition for discharge objection was made by certain creditors. The reasons, among others specifically recited, were, that the court did not have jurisdiction of the bankrupt by reason of the fact that the petition was not filed within the statutory period; and, that, because the petition when filed did not set forth facts sufficient to justify the granting of the order, the court did not acquire jurisdiction of either the bankrupt or this proceeding. The court held that the matter of granting an extension of time for the filing of a petition for discharge was in the first instance solely in the discretion of the judge. If the petition for the order averred that illness prevented the bankrupt from having sufficient means to defray the expenses of the hearing and preparing the petition, there was some reason for the court to conclude that he was "unavoidably prevented" from filing within the 12 month statutory period. The court had jurisdiction and the proper course for the objecting creditors was by way of appeal from its order, and not to raise the question at the hearing on the petition for discharge. *In re Lewin,* 135 Fed. 252, is to the effect that in order to authorize a petition for discharge to be filed after the expiration of one year following the adjudication of bankruptcy, it must be made to appear that the bankrupt was unavoidably prevented from filing such petition within that period. The discretion of the judge is not arbitrary but judicial. Sickness of the bankrupt's family was the principal reason assigned for failure to seasonably file the petition, but the court said it might have been filed before such difficulty appeared. *In re Harris and Algor,* 15 A. B. R. 705, involved almost the precise question as in *In re Lewin,* except that the illness was in the family of the bankrupt's attorney who was thereby prevented from giving the proceedings his proper attention. On the authority of *In re Lewin,* the referee denied the petition for an extension, interpreting that decision to construe the condition of the provision "unavoidably prevented" to include the entire twelve month period, thus making it incumbent on a petitioner to show that his inability to file was continuous for such period before the court could exercise its discretion in granting an extension. This opinion was confirmed by the District Court in overruling petitioner's exception to this report. The principal case and *In re Casey* adopted a more liberal and undoubtedly a more equitable interpreta-

tion of this section of the statute, which seems to be preferable, as the creditors have always the right to oppose the granting of the application for discharge, no matter when it is filed.

BANKRUPTCY—VOIDABLE PREFERENCES—PROCEEDS OF FIRE INSURANCE POLICY.—The Maple Valley Canning Co. was adjudged a bankrupt July 16, 1906. Appellant bank was one of the creditors. On Sept. 15, 1905, the Canning Co. was indebted to the Bank in the amount of $2038 and the bank had in its possession $1,500 of the company's funds. To secure the release of these funds the Canning Co. on this date promised to give the Bank a mortgage on its property. The $1,500 was accordingly surrendered, but the mortgage was not executed until April 10, 1906, which was within four months of the bankruptcy. At the time of the execution of the mortgage the bank demanded a policy of insurance on the company's property, and such policy was issued May 10th, 1906, the premium thereon being paid by the bank. The policy contained a mortgage clause whereby, in case of loss, the proceeds of the policy were to be paid to the mortgagee "as its interest may appear." The property was damaged by fire May 25th, 1906, and the bank, as mortgagee, collected $1,249 on the policy, which amount was credited to the Canning Co's. indebtedness. After adjudication, the trustee sues to have the amount collected on the policy declared a preference. *Held* that such fund was a preference and recoverable by the trustee. *Brown City Savings Bank* v. *Windsor* (C. C. A. 1912) 198 Fed. 28.

In *Morgan* v. *First Nat. Bank,* 145 Fed. 466, 76 C. C. A. 236, it was held that when a trust deed was executed by an insolvent within four months of his bankruptcy to secure an antecedent debt, without actual fraud but intended to create a preference and accepted as such by the creditor, it resulted in giving a preference. In the principal case there was no doubt that a preference was intended, and the main question was whether the proceeds of the policy stood on the same footing as the mortgage itself, which was clearly voidable by the trustee. The court, finding no authorities clearly in point, decided that the general purpose of the Bankruptcy Act would be best served by considering the transaction to be a preference, and was undoubtedly correct in its decision.

BILLS AND NOTES—LIABILITY OF IRREGULAR INDORSER—QUESTION FOR JURY.—Plaintiff was the payee of a promissory note, signed on its face by one Rogers, and having on its back the names of Conant and Flanders, written there by them before delivery of the note to the plaintiff. *Held,* that Conant and Flanders, being strangers to the note, became prima facie makers, but it was open to them to show that they were not makers, but indorsers, and so not holden, unless the plaintiff had taken steps to charge them as indorsers. *Woodsville Guaranty Savings Bank* v. *Rogers et al.* (Vt. 1912) 83 Atl. 537.

Before the enactment of the Negotiable Instrument Law the authorities were in hopeless conflict upon the liability of the irregular or anomalous indorser. There were five different holdings upon this point. 1 DANIEL NEG. INST. § 713 et seq. Many courts held, as in the principal case, that the liabil-